

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7671 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHIMANLAL JESANGBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AV TRIVEDI for Petitioner

MR DP JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/11/98

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. D.P. Joshi, Ld. A.G.P. for the respondents.

2. By order dated 15/9/1998 notice was issued and the operation of the impugned order was directed to remain stayed. It appears that by impugned order the learned Deputy Collector exercising powers of the Government u/S. 65 of the Bombay Tenancy and Agricultural

Lands Act, 1948 has directed to assume management of block no. 165 i.e. the land in question. The case of the petitioner is that the petitioner has been cultivating the land through the petitioner's power of attorney holder Baldevbhai Maganbhai Padia and, therefore, in the absence of any opportunity of being heard given to the petitioner accordingly, the order of assumption of land in question could not have been passed in the facts of the case.

3. I have heard the learned advocate for the petitioner as well as Id. A.G.P. for the respondents. By consent the matter is taken up for final disposal. It would appear from the impugned order that the service of notice was effected by substituted service. As against that the power of attorney holder has come out with the case that he had been cultivating the land as can be seen from the record of rights, which indicates cultivation of land from year to year. However, this important fact is disputed and, therefore, this observation will not be treated as having been an ascertainment of fact. What is important to be noticed is that the petitioner wants principles of natural justice being followed by the petitioner being given opportunity of hearing as stated above. He, through his learned advocate, undertakes to remain present before the learned Deputy Collector on the date fixed by this Court. In that view of the matter, following direction is issued :-

Impugned order passed by the learned Deputy Collector on 17/7/1998 and placed at Annexure - A is hereby set aside and the matter is revived before the said authority. The petitioner will first appear before the learned Deputy Collector on 14/12/1998. It will be open to the learned Deputy Collector to proceed with the matter as and when convenient to the learned Deputy Collector, after informing the petitioner about the date of hearing. It is made clear that the proceedings must be heard and decided in accordance with law, after hearing the petitioner through petitioner's power of attorney holder as suggested, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of writ of this direction.

Rule is made absolute in the aforesaid terms. The petitioner shall pay the cost of the Government quantified at Rs.300/-, which cost shall be deposited by the petitioner before the Deputy Collector. The petitioner shall bear his own cost

so far as this petition is concerned.

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PVR sca767198j.